IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 600 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Sampatbhai Lavjibhai Vaghari & Otrs.
Versus
State of Gujarat & Otrs.

Appearance:
MR JS Unwala for MR PK Jani for petitioners
MS Manisha Lavkumar AGP for respondent no.1 & 2
MR MC Shah for respondent no.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of order : 19/06/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties.

2. The learned counsel for the petitioners is utterly failed to satisfy that they have right, title, interest to put their huts on the land in dispute. From

the facts of this case, it is clear that the petitioners have made an encroachment on the public road. The encroachment made on the public road was removed by the respondents, but it is really shocking that after filing of this petition, they have again made fresh encroachment on the road. This is highly objectionable and it cannot be protected. The petitioners, even if they are poor, cannot be allowed to make encroachment on the public road. They have no right and justification to make encroachment on the public road.

3. I failed to find any justification in the prayer made by the learned counsel for the petitioners for direction to the respondents to allot site to the petitioners. The petitioners are the trespassers on the public road and they cannot be protected by this court under its extra ordinary equitable jurisdiction. The respondents have not committed any illegality in removing this encroachment on the public road for which no notice was need to be given to any of the petitioners. Again, the encroachment which has been made by the petitioners on the public road, taking the shelter of this petition, is wholly unjustified and in fact, an abuse of the process of the court. Though at a point of time, I thought of to take appropriate action against these petitioners for this encroachment made, but looking to the facts that they may be poor persons, this course is not adopted. The respondents nos. 2 and 3 are free to remove forthwith this encroachment, without any notice and opportunity of the hearing to the petitioners. In fact, it is for the petitioners themselves to voluntarily remove this encroachment forthwith and not invite action from side of the respondents.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. In the facts of the case, no order as to costs.

(S.K. Keshote, J.)
(kamlesh)